

OLC # 78-12576

OGC 78-3932

15 June 1978

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MEMORANDUM FOR : [redacted]
Office of Legislative Counsel

FROM : [redacted]
Office of General Counsel

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SUBJECT : HR 13040, Proposed Amendment to
Freedom of Information Act

1. This language does nothing to change the current state of the (b)(1) exemption. Apparently, Congressman Devine is attempting to give the court less discretion in deciding whether or not to conduct an in camera examination of documents for which the (b)(1) exemption is claimed. The bill states (at p. 2 lines 3-6) "Such court may examine such records in camera only if it is necessary, after consideration by the court of all other attendant material, in order to determine whether such classification is proper." [emphasis supplied]. Recent judicial opinions have already underscored the fact that a judge need conduct an in camera examination only when agency claims are too sweeping, or suggestive of bad faith. See Weissman v. CIA, 565 F.2d 692 (D.C. Cir. 1977); Goland v. CIA, C.A. No. 76-1800 (D.C. Cir., May 23, 1978); and Baker v. CIA, C.A. No. 77-1228 (D.C. Cir., May 24, 1978). Thus, the weight of recent case law supports the CIA's current utilization of affidavits from high level Agency officials which explain in detail why a document is classified and thereby exempt pursuant to (b)(1). The proposed amendment re (b)(1) adds nothing of substance to the present law and only serves to point out for Congressional scrutiny the generally favorable positions already taken by the courts in (b)(1) cases.

2. The above concerns only the (b)(1) exemption language treated in HR 13040 and does not concern the language regarding investigatory records [(b)(7)]. I suggest you speak to [redacted] who has a keen familiarity with this area and who has expressed a willingness to talk to you about it.

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